

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CABLE NEWS NETWORK  
One CNN Center  
Atlanta, GA 30303,**

**Plaintiff,**

**v.**

**FEDERAL BUREAU OF INVESTIGATION,  
935 Pennsylvania Avenue, NW,  
Washington DC 20535-0001,**

**Defendant.**

**Case No. 1:19-cv-1626**

**COMPLAINT**

Plaintiff Cable News Network, Inc. (“CNN”) brings this suit against the Federal Bureau of Investigation (“FBI”). In support thereof, CNN states as follows:

**INTRODUCTION**

1. This is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.*, for declaratory, injunctive, and other appropriate relief, seeking the immediate processing of CNN’s request for case files and memoranda, including but not limited to the FBI’s FD-302s (“302s”) related to the interviews of approximately 500 witnesses as part of the Office of Special Counsel Robert S. Mueller III’s investigation into potential Russian interference in the 2016 election.

2. Despite numerous citations to 302s and other underlying documentation throughout the publicly-released version of the Special Counsel’s Report – including many direct

quotes from documents themselves – the FBI has failed to respond to CNN’s request for the Report’s underlying evidence and factual findings within the time required by the FOIA.

### **PARTIES**

3. Plaintiff CNN is a 24-hour cable news network headquartered in Atlanta, Georgia. CNN operates nine news bureaus across the United States, including in Washington, D.C., and 31 news bureaus internationally. A trusted source of news and information, CNN reaches more individuals on television, the web and mobile devices than any other cable television news organization in the United States.

4. Defendant FBI is a division of the Department of Justice (“DOJ”), a department of the Executive Branch of the United States, and an agency within the meaning of 5 U.S.C. § 552(f)(1). The FBI has possession and control of the records requested by CNN.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action and personal jurisdiction over the FBI pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B) and (a)(6)(C)(i).

6. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. CNN is deemed to have exhausted all its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C) because the FBI has failed to respond within the statutorily mandated time limit after receipt of a request. 5 U.S.C. § 552(a)(6)(A)(i).

### **FACTUAL ALLEGATIONS**

8. FOIA “focuses on the citizens’ right to be informed about ‘what their government is up to,’” by fostering the release of “[o]fficial information that sheds light on an agency’s performance of its statutory duties.” *DOJ v. Reporters Comm. for Freedom of the Press*, 489

U.S. 749, 750, 773 (1989) (citation omitted). “[D]isclosure, not secrecy, is the dominant objective” of FOIA. *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted).

9. CNN, like other news organizations, plays a critical role in providing information to citizens about “what their government is up to.” Indeed, the First Amendment’s guarantee of freedom of the press is meant to enable journalists to play an “essential role in our democracy,” to “bare the secrets of government and inform the people.” *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring).

10. Through the FOIA request at issue in this case, CNN seeks to fulfill its journalistic function and provide the public with documents detailing the Special Counsel’s unprecedented investigation of the highest-ranking officials in the U.S government – the president and his staff.

11. On March 26, 2019, CNN Reporter Katelyn Polantz submitted a FOIA request to DOJ seeking copies of “FBI memoranda, such as 302s, from any and all of the interviews of the ‘approximately 500 witnesses’ in the Mueller investigation,” as well as “any and all case files” related to those interviews (“the Request”). A true and correct copy of Ms. Polantz’s Request is attached as Exhibit A.

12. The records sought by Ms. Polantz’s Request, when disclosed, will offer unique insight to the facts underlying Special Counsel Mueller’s Report.

13. On April 18, 2019, the DOJ released a redacted version of the report summarizing the Special Counsel’s investigation (“the Mueller Report”). CNN made the Mueller Report available on its website, as well as covering the release of the Report across all of its platforms.

*See, e.g., Read and Search the Full Mueller Report*, CNN (Apr. 18, 2019), <https://www.cnn.com/2019/04/18/politics/full-mueller-report-pdf/index.html>.

14. The redacted version of the Mueller Report contains more than 1,700 references to FBI 302s memorializing interviews with witnesses. *Id.*

15. Some of the FBI 302s summarizing witness interviews from the Mueller investigation have already been publicly released. *See, e.g., READ: Mueller memo summarizing FBI's interview with Michael Flynn*, CNN (Dec. 17, 2018), <https://www.cnn.com/2018/12/17/politics/mueller-memo-doc-flynn/>.

16. On April 25, 2019, the FBI acknowledged receipt of Ms. Polantz's Request in a letter and assigned it tracking number 1433273-000. *See* FBI Letter, attached as Exhibit B.

17. The FOIA requires that within 20 working days of receiving a request an agency, like the FBI, notify a requester of the scope of the documents that the agency will produce, the scope of the documents that the agency plans to withhold under any FOIA exemptions, the right to seek assistance from a FOIA Public Liaison or the Office of Government Information Services, and the right to administratively appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

18. In this case, however, the FBI's letter to Ms. Polantz stated that the records sought involved "unusual circumstances" that will "delay [the FBI's] ability to make a determination" on her Request. *See* Exhibit B.

19. In "unusual circumstances," an agency may take an additional ten days – 30 working days – to make and communicate its decision about whether to comply with a FOIA request and the reasons for its determination. 5 U.S.C. § 552(a)(6)(B)(i).

20. May 7, 2019 marked 30 working days from the date of Ms. Polantz's Request.

21. Nearly a month after the maximum time frame permitted by law, the FBI has not provided a response indicating whether it will comply with Ms. Polantz's Request.

22. Therefore, the FBI has constructively denied the Request and CNN has exhausted its administrative remedies, permitting it to bring suit directly in federal district court. 5 U.S.C. § 552(a)(6)(C)(i).

**CLAIM FOR RELIEF**

**Declaratory and Injunctive Relief:**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552**

23. CNN realleges and incorporates by reference all previous paragraphs as if fully set forth herein.

24. The FOIA provides this Court with "jurisdiction to enjoin [the FBI] from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

25. The documents requested by CNN are agency records within the FBI's control.

26. Pursuant to the FOIA, even in "unusual circumstances," the FBI was required to respond to CNN's request within 30 working days, or by May 7, 2019. *Id.* § 552 (a)(6)(B)(i).

27. As of the date of this filing, nearly a month since May 7, 2019, the FBI has not provided any substantive response to CNN. Nor has it produced any of the requested records.

28. The FBI has, thus, wrongfully withheld agency records in violation of the FOIA.

29. CNN has exhausted its administrative remedies with respect to the FBI's failure to respond to its request and produce the requested records. *Id.* § 552(a)(6)(C)(i).

30. CNN requests a declaratory judgment that the FBI has violated FOIA and that CNN is entitled to immediately receive the records referenced above.

31. CNN further requests that, pursuant to 5 U.S.C. § 552(a)(4)(B), the Court issue an

injunction to the FBI to process CNN's request and produce the requested records.

**REQUEST FOR RELIEF**

**WHEREFORE**, CNN respectfully requests that this Court:

- A. Declare that the FBI's failure to provide responsive documents is unlawful under FOIA;
- B. Enter an injunction that directs the FBI to immediately process CNN's March 26, 2019 Request;
- C. Enter an injunction that directs the FBI to make all requested records available to CNN, unredacted, and without further delay;
- D. Provide for expeditious proceedings in this action;
- E. Award CNN its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- F. Grant such other and further relief as the Court may deem just and proper.

Dated: June 4, 2019

BALLARD SPAHR LLP

By: /s/ Charles D. Tobin

Charles D. Tobin (D.C. Bar No. 455593)  
[tobinc@balladspahr.com](mailto:tobinc@balladspahr.com)  
Matthew E. Kelley (D.C. Bar No. 1018126)  
[kelleym@ballardspahr.com](mailto:kelleym@ballardspahr.com)  
BALLARD SPAHR LLP  
1909 K Street, NW  
Washington, D.C. 20006-1157  
T: (202) 661-2200  
F: (202) 661-2299

*Counsel for Cable News Network, Inc.*